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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/487,383

01/18/2000

Michael R. Bedford

68019

3100

22242

7590

05/21/2002

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

MELLER, MICHAEL V

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 05/21/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/487,383

Applicant(s)

BEDFORD ET AL.

Examiner

Michael V. Meller

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-8,13,15,17,18,21-26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The application claims a method for treating a bacterial infection in a chicken wherein chickens having a bacterial infection caused by bacteria are fed an animal feed with xylanase, cellulase, or beta-glucanase. The application only teaches a method of preventing or treating a bacterial infection as a future possibility. There is no disclosure which identifies a sick chicken and then administers the feed with the enzyme in it. The specification only teaches that the feed can be used to treat or prevent bacterial

infections in chickens, but there is absolutely no disclosure of isolating or identifying out the chickens that are sick and treating them specifically for the infection.

***Claim Rejections - 35 USC § 103***

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,287,867 in view of Bedford '055 or Bedford '678 for the reasons of record and for the reasons which follow.

The reference teaches feeding chickens feed which contains xylanase that improves utilization of the feed by the chickens. When feeding chickens the xylanase containing feed it would have been obvious to identify chickens that are sick such as having one of the claimed infections since it is routine in raising chickens to identify sick chickens and it would have been obvious to continue feeding the feed to the sick chickens for the same reasons as feeding it to the healthy chickens since the feed makes the chickens grow better and be healthier. Obviously chickens that are healthier can resist infection better.

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarkson et al. in view of Bedford '055 or Bedford '678 for the reasons of record and for the reasons which follow.

The reference teaches feeding chickens feed which contains xylanase that improves utilization of the feed by the chickens. When feeding chickens the xylanase containing feed it would have been obvious to identify chickens that are sick such as having one of the claimed infections since it is routine in raising chickens to identify sick chickens and it would have been obvious to continue feeding the feed to the sick chickens for the same reasons as feeding it to the healthy chickens since the feed makes the chickens grow better and be healthier. Obviously chickens that are healthier can resist infection better.

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. in view of GB 2,287,867 for the reasons of record and for the reasons which follow.

The reference teaches feeding chickens feed which contains xylanase that improves utilization of the feed by the chickens. When feeding chickens the xylanase containing feed it would have been obvious to identify chickens that are sick such as having one of the claimed infections since it is routine in raising chickens to identify sick chickens and it would have been obvious to continue feeding the feed to the sick chickens for the same reasons as feeding it to the healthy chickens since the feed makes the chickens grow better and be healthier. Obviously chickens that are healthier can resist infection better.

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borriss et al. in view of Bedford '055 or Bedford '678 for the reasons of record and for the reasons which follow.

The reference teaches feeding chickens feed which contains xylanase that improves utilization of the feed by the chickens. When feeding chickens the xylanase containing feed it would have been obvious to identify chickens that are sick such as having one of the claimed infections since it is routine in raising chickens to identify sick chickens and it would have been obvious to continue feeding the feed to the sick chickens for the same reasons as feeding it to the healthy chickens since the feed makes the chickens grow better and be healthier. Obviously chickens that are healthier can resist infection better.

Claims 1, 3, 6-8, 13, 15, 17, 18, 21-26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford '055 or Bedford '678 for the reasons of record and for the reasons which follow.

The reference teaches feeding chickens feed which contains xylanase that improves utilization of the feed by the chickens. When feeding chickens the xylanase containing feed it would have been obvious to identify chickens that are sick such as having one of the claimed infections since it is routine in raising chickens to identify sick chickens and it would have been obvious to continue feeding the feed to the sick chickens for the same reasons as feeding it to the healthy chickens since the feed makes the chickens grow better and be healthier. Obviously chickens that are healthier can resist infection better.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Michael V. Meller  
Examiner  
Art Unit 1651

MVM  
May 17, 2002